

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN JAMES POKORNY,

Defendant-Appellant.

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UNPUBLISHED

February 6, 2007

No. 264649

St. Joseph Circuit Court

LC No. 03-011592-FC

Before: Borrello, P.J., and Jansen and Cooper, JJ.

COOPER, J. (*concurring*)

I agree with the result reached by the majority in this matter, and write separately only to address the analysis of the admission of evidence of defendant's methamphetamine use.

The majority found that this evidence was admitted for a proper purpose, and found that although the probative value was low and the risk of prejudice high, because it presented a close evidentiary question, the trial court did not abuse its discretion.

The majority admits that “[t]here was also a danger that the jurors in the present case would be less likely to view defendant as a loving father and victim of a bitter custody dispute after they learned that he had a record and spent thousands on methamphetamine.” But the majority concludes that this potential danger was effectively resolved by the trial court’s instruction to the jury that it could not consider this as evidence that defendant was a bad man or more likely to have committed a crime.

I am not convinced the jury might so easily block out the logical inference that defendant’s methamphetamine use and expenditures to support the habit do indeed make him if not a bad person, at least a bad father.

Given the weak purpose relied upon as proper here, and the correspondingly negligible probative value, I would find that the prejudicial effect of this evidence outweighed its probative value, and that it was therefore improperly admitted.

Like the majority, I must conclude that this error was harmless, although I would do so as a consequence of the weight of the other evidence offered against defendant.

/s/ Jessica R. Cooper